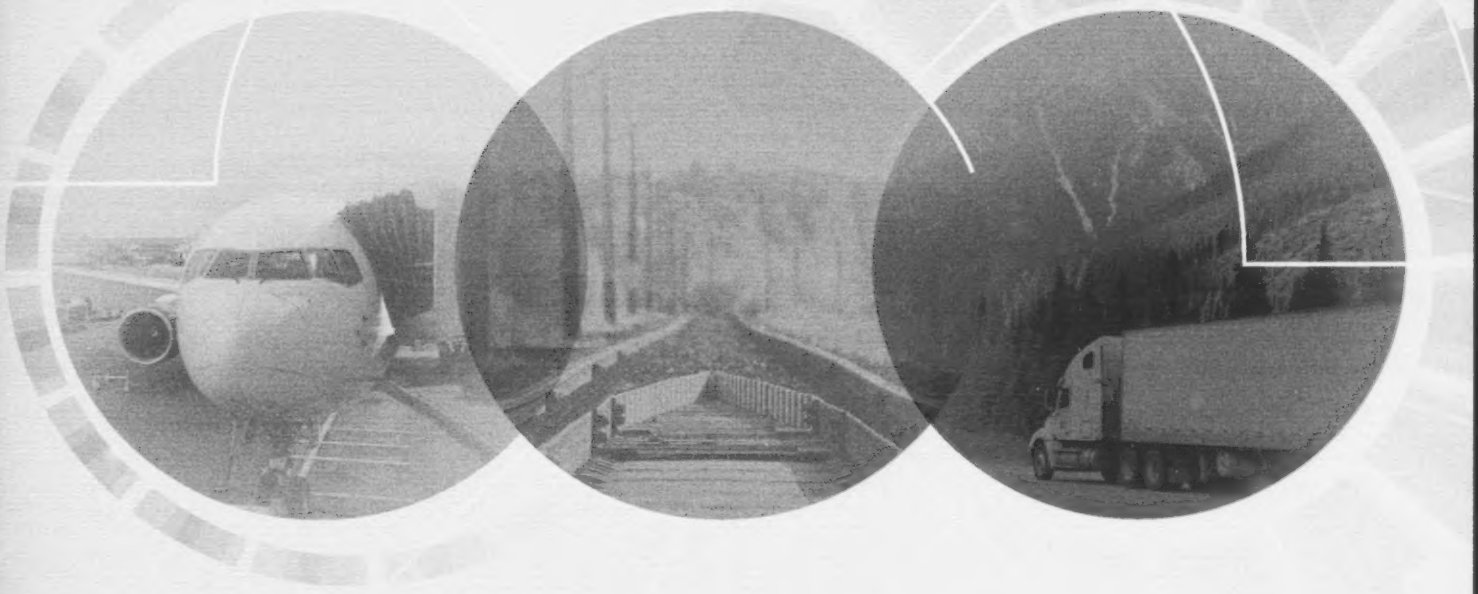
Canada Industrial Relations Board

Conseil canadien des relations industrielles

ANNUAL REPORT

2015
2016

Encouraging Fair and Productive Workplaces



Canada

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Cat. No.: LR1E-PDF

ISSN: 2369-923X

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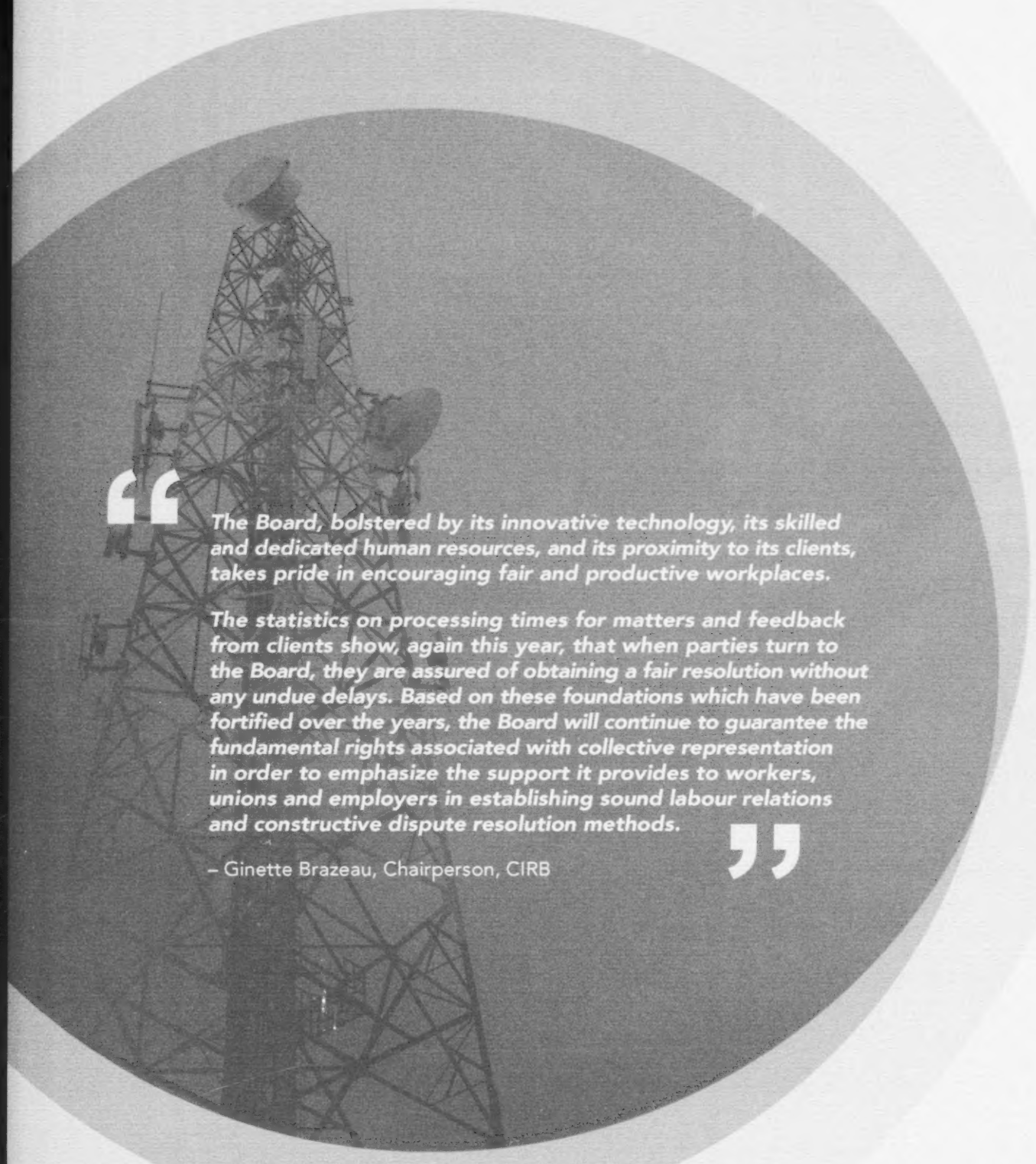


The Board, bolstered by its innovative technology, its skilled and dedicated human resources, and its proximity to its clients, takes pride in encouraging fair and productive workplaces.

The statistics on processing times for matters and feedback from clients show, again this year, that when parties turn to the Board, they are assured of obtaining a fair resolution without any undue delays. Based on these foundations which have been fortified over the years, the Board will continue to guarantee the fundamental rights associated with collective representation in order to emphasize the support it provides to workers, unions and employers in establishing sound labour relations and constructive dispute resolution methods.

– Ginette Brazeau, Chairperson, CIRB

MESSAGE FROM THE CHAIRPERSON

The 2015–16 fiscal year has been a transitional year for the Canada Industrial Relations Board (the Board or the CIRB). The amalgamation of support services for certain administrative tribunals led to the creation of the Administrative Tribunals Support Service of Canada (ATSSC) in November 2014, bringing with it numerous administrative changes for the CIRB.

The Board experienced another major change on June 16, 2015, when Bill C-525 (*Employees' Voting Rights Act*) came into force. This new Act brought substantial changes to the Board's practices in processing applications for certification and revocation. Nonetheless, with its innovative technological tools, its skilled and dedicated human resources, and its proximity to its clients, the Board continued to play its important role with workers and their employers. Consequently, you can certainly appreciate the great pride I take in presenting to you the achievements of a team of dedicated employees, managers and decision-makers whose efforts are rewarded with a positive report that shows tangible results for the Board's clients.

In addition to the challenges the CIRB faced this year, the terms of a large number of its decision-makers came to an end. On behalf of the Board and on my own behalf, I wish to commend the invaluable contribution made by Mr. Graham Clarke and Ms. Judith F. Macpherson, Vice-Chairpersons, Messrs. Robert Monette and Richard Brabander, Members representing employers, Messrs. Normand Rivard and Daniel Charbonneau, Members representing employees, and part-time Members William Terence Lineker and Cynthia Catherine Oliver. The Board also had to adapt to the retirement of one of its experienced regional directors, Mr. Tom Panelli, who had been Regional Director of the Western Region for nearly 20 years.

Despite a year filled with challenges stemming from these numerous changes, the Board continued to stand with the workers and their employers, emphasizing the support it provides to them in establishing sound industrial relations and constructive dispute resolution methods. It will continue to safeguard their rights and obligations under the *Canada Labour Code* (the *Code*), while maintaining close ties with them so that it may evolve in parallel with their work environments.

Composition of the Board

The *Code* establishes that the Board will be composed of the following decision-makers, to be appointed by the Governor in Council:

- A Chairperson, for a term not exceeding five years
- At least two full-time Vice-Chairpersons, for a term not exceeding five years
- Any other part-time Vice-Chairperson, for a term not exceeding five years
- At most, six full-time Members, equally representing employers and employees, for a term not exceeding three years
- Any other part-time Member, equally representing employers and employees, for a term not exceeding three years
- Any other part-time Member needed to carry out the Board's functions under Part II of the *Code*.

As of March 31, 2016, the Board comprised the Chairperson, six full-time Vice Chairpersons, and three full-time Members. However, the term of two Vice Chairpersons ends early in the next fiscal year, namely on April 24, 2016, for one, and on May 2, 2016, for the other. The term of one Member also comes to an end in early May 2016. Consequently, the Board faces a reduced composition at the start of fiscal year 2016-17.

SECTION 1

WHAT DOES THE BOARD DO?

WHAT DOES THE BOARD DO?

The Board undertakes a wide range of industrial relations activities in matters related to federal jurisdiction sectors. More specifically, it:

- Grants, modifies or terminates collective bargaining rights
- Investigates, mediates and adjudicates complaints of unfair labour practice
- Issues cease and desist orders in cases of unlawful strikes and lockouts
- Renders decisions on jurisdictional issues
- Deals with the complex labour relations implications of corporate mergers or acquisitions
- Determines the level of services that must be maintained during a legal work stoppage.

The Board fulfills a vital function in recognizing and protecting the rights of employees and employers, and in constructively resolving conflicts. It does so with a commitment to process, hear and determine applications and complaints fairly, expeditiously, and economically.

Before adjudication, the Board plays an active role in helping parties to resolve their disputes through mediation and alternative dispute resolution methods.

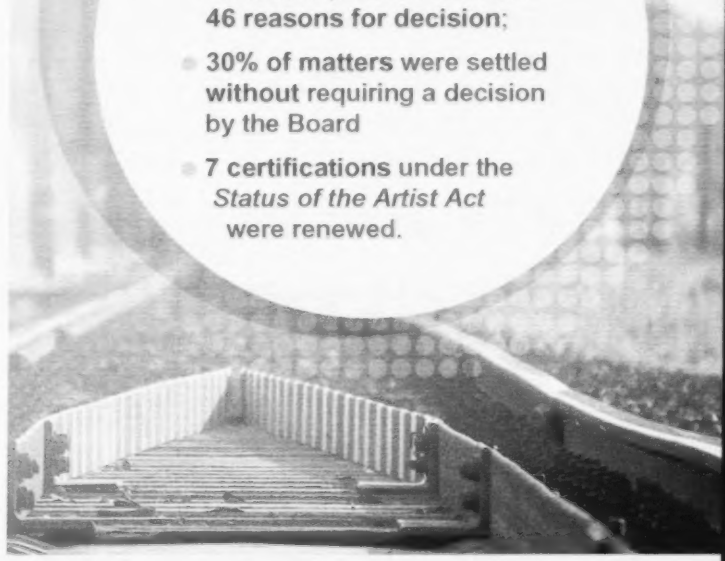
Active Participation in the Industrial Relations Community

In keeping with the preamble to the *Code*, the Board promotes the well-being of Canadian workers, trade unions and employers through the encouragement of free collective bargaining and the constructive settlement of disputes.

In this regard, it participates in the unions' and employer organizations' activities and supports their collective efforts to develop good relations and pursue constructive dispute resolution practices. As such, the Board participates actively in outreach activities, both nationally and internationally, allowing it to learn about the needs of employers, workers and the union organizations that represent them, and to implement exemplary practices in its service delivery approach.

DURING THE YEAR...

- The Board issued **202 letter decisions**, **263 orders** and **46 reasons for decision**;
- **30% of matters** were settled **without** requiring a decision by the Board
- **7 certifications** under the *Status of the Artist Act* were renewed.



CIRB's Client Consultation Committee

First, the Board maintains dialogue with its clients through the Client Consultation Committee (the Committee) to ensure its processes and approaches to case management remain relevant.

The Committee is composed of the Chairperson, the Board's Executive Director and General Counsel, and representatives selected by the Board's major client groups, including:

- Federally Regulated Employers in Transportation and Communication (FETCO)
- Canadian Labour Congress (CLC)
- Confédération des syndicats nationaux (CSN)
- Canadian Association of Labour Lawyers (CALL) (representing counsel for the unions)
- Canadian Association of Counsel to Employers (CACE) (representing counsel for the employers).

The Committee provides advice and recommendations to the CIRB's Chairperson on ways in which the CIRB can best meet the needs of its clients. The Committee convened twice in 2015–16 to discuss, among other matters, the implementation of the *Employees' Voting Rights Act* (the Act) and the appointment of decision-makers to the Board.

The Board also engaged with the Committee and sought feedback from its stakeholders when it developed proposals to amend the *Canada Industrial Relations Board Regulations, 2012* (the *Regulations*) in order to implement the Act. The Board analyzed the feedback and proposals it received, then elected to implement a pilot project in June 2015 before formally amending its *Regulations*.

THE CIRB IS ALREADY PREPARING FOR THE NEXT NATIONAL INDUSTRIAL RELATIONS CONFERENCE WHICH WILL BE HELD IN SEPTEMBER 2017

National Industrial Relations Conference

In partnership with the Federal Mediation and Conciliation Service, the Board also organized the National Industrial Relations Conference. This conference was held on September 17 and 18, 2015, and it was a huge success! Employer and union representatives from across the country participated in discussions on the significant challenges in the current workplaces. In keeping with the conference theme, "**Supporting Collaborative Relationships in the Evolving World of Work**," the following topics were addressed:

- Building positive union-management relations
- Dynamics of collective bargaining
- The workplace of tomorrow.

The conference was very well-attended; more than 200 delegates were registered. The success of the conference speaks to the dynamic nature of industrial relations in the federal sector and to the fact that evidently, such meeting forums are necessary to allow employer and union representatives to forge relationships and build on them to encourage more productive and harmonious work environments.

Other National and International Forums

The Chairperson and other members of the Board also attend numerous forums and meetings in an effort to communicate the Board's policies and seek input from the community it serves. These outreach activities on the national and international scenes provide the Board with access to best practices that it can emulate and adopt to improve its performance and approaches in order to maximize the use of resources and increase the impact of its services.

For example, the annual meeting of chairpersons of labour relations boards in Canada provides an opportunity to take stock of the realities in which all labour relations boards in Canada operate and to identify trends across the country in order to prepare and implement mechanisms to better react and respond to the needs of the parties that appear before the Board.

The Board also plays a leading role in international organizations whose objective is to support government agencies responsible for promoting dispute resolution based on the shared interests of the parties and harmonious labour relations. The CIRB's active participation in the Association of Labor Relations Agencies and the International Forum of Labour and Employment Dispute Resolution Agencies allows for broader dialogue on the various challenges that arise in modern workplaces. These challenges lead to labour disputes that involve new dynamics which the labour agencies must learn to handle in order to adapt their services and approaches to better respond to the needs of clients who appear before them today.

An Innovative Organization

Building on its capacity for innovation, the Board invested significant resources and effort in information technology. In order to facilitate access to its services and limit the use of paper, it:

- Continues to participate in the Case Management System (CMS) renewal initiative with the Treasury Board. The CMS renewal has been designated a priority for the CIRB in the coming years. A great deal of effort and energy are allocated to this project, given that it involves a comprehensive review of all business processes with a view to automating them, increasing effectiveness, and ultimately, achieving savings.
- Continues to encourage clients to use the Web Portal to file documents electronically. This service allows clients to file their documents in Portable Document Format (PDF) in our centralized document filing system.

THE FOLLOWING ARE A FEW INTERESTING FACTS ABOUT FILING DOCUMENTS ELECTRONICALLY THROUGH THE WEB PORTAL:

- When you file a document electronically using this Portal, it is unnecessary to forward a hard copy of the same document to the CIRB. The electronic version will be considered the original copy.
- A confirmation message will appear on the Web page once filing is complete.
- A confirmation message will also be sent by an automated email system to the email address that you will have provided.
- If you are asked for an electronic signature, it must comply with the CIRB's requirements set out in section 6 of the *Regulations* and the *Status of the Artist Act Procedural Regulations* on signing documents filed. The CIRB considers an electronic signature to be one or more characters, letters, numbers or other numeric symbols incorporated into an electronic document, associated with an electronic document, or in an attachment.
- All documents submitted to the Board through the Portal must be in Portable Document Format (PDF). Other formats will not be accepted for electronic filing.
- The total size of attachments must not exceed 15 MB.

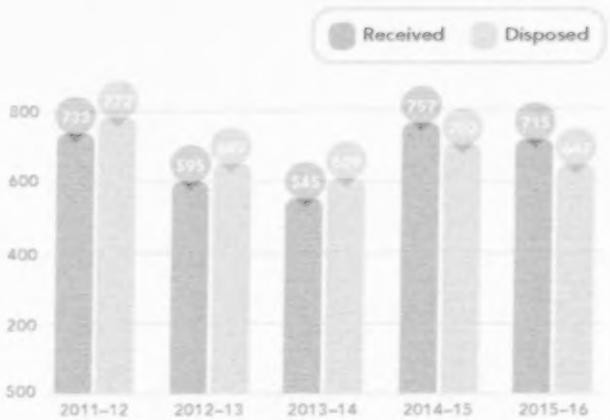
ON AVERAGE, VISITORS VIEW 520 PAGES PER DAY ON THE BOARD'S WEB SITE

- Continues to improve and implement electronic capturing of all incoming documents and the automated creation of e-case files. As a result, work can be reallocated to other regional offices, as needed, and certain priority matters can be processed even more quickly than in the past.
- Uses electronic representation voting more frequently. In circumstances where the unit includes a large number of employees or where employees are dispersed over a wide geographic area, industrial relations officers will hold e-votes with the support of a company that specializes in using electronic voting systems. Eligible employees are issued personal identification numbers (PINs) and are able to cast a secure electronic ballot via the Internet or telephone. The Board's officers administer the vote and oversee the auditing process. At the conclusion of the voting period, the ballots are tabulated instantaneously, allowing the parties to know the results immediately. E-voting has proven to be a secure, cost-effective and expedient means of ascertaining employee wishes.

The Board's Performance

Volume of Matters

The nature of the demand for the Board's services varies from year to year, based on various factors, such as the economy. A considerable increase has been noted in the number of applications and complaints received in the past two years, compared to the two years before that. A total of 715 applications/complaints were received in 2015–16, a figure similar to the number of files received in 2014–15, and represents a 29% increase over the two previous years (2012–13 and 2013–14).

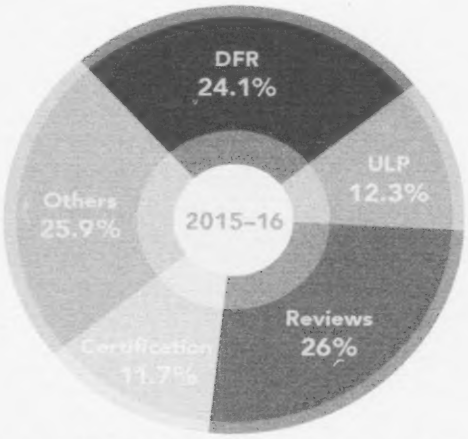


Volume of Matters

2,419:
NUMBER OF CALLS **FOR INFORMATION RECEIVED** THROUGH THE BOARD'S 1-800 LINE

The Board's regional offices in Vancouver (British Columbia), Toronto (Ontario), Montréal (Quebec) and Dartmouth (Nova Scotia), shared the workload as illustrated in the chart below:

Chart 1 – Applications/Complaints Received in 2015–16



Total: 715 Applications/Complaints

Chart 1 shows that unfair labour practice (ULP) complaints represent just over 36% of incoming matters in 2015–16. Of this figure, duty of fair representation complaints (DFR) represent 24.1% of cases and other ULP complaints represent 12.3% of cases. Applications for certification and bargaining unit reviews also represent a significant portion of incoming matters, at 11.7% and 26% respectively.

Decision-Making

The Board issues detailed Reasons for decision in matters of broader national significance and precedential importance. For other matters, the Board issues concise letter decisions which accelerates the decision-making process and brings more expedient solutions to the parties in labour relations matters. The Board also disposes of certain matters by issuing an order that summarizes its decision. The Board strives to provide timely and legally sound decisions that are consistent across similar matters in order to establish reliable and clear jurisprudence. One component of the overall processing time is the length of time required by a Board panel to prepare and issue a decision following the completion of the hearing of a matter. A panel may decide a case without a hearing on the basis of written and documentary evidence on file, such as investigation reports and written submissions, or it may schedule an oral hearing to obtain further evidence and arguments in order to decide the matter.

From April 1, 2015, to March 31, 2016, the CIRB issued 46 detailed Reasons for decision, 202 letter decisions, and 263 orders, for a total of 511 written decisions.

Another approach to evaluating the Board's performance on decision-making time is to use section 14.2(2) of the *Code* as a benchmark. This section stipulates that a panel must render its decision and give notice of it to the parties within 90 days after the day on which it reserved its decision or within any further period that may be determined by the Chairperson. Based on this criterion, the Board was well within its objective, as the average decision-making time during the period under review was 42 days. The Board continues to demonstrate commitment and resolve in maintaining its rate of disposition to ensure that it does not allow a backlog of cases to reoccur.

DID YOU KNOW THAT...

... we are currently **digitizing all orders** and **decisions issued since 1973**; they will be **available** on our **Web site** shortly

Applications for Judicial Review

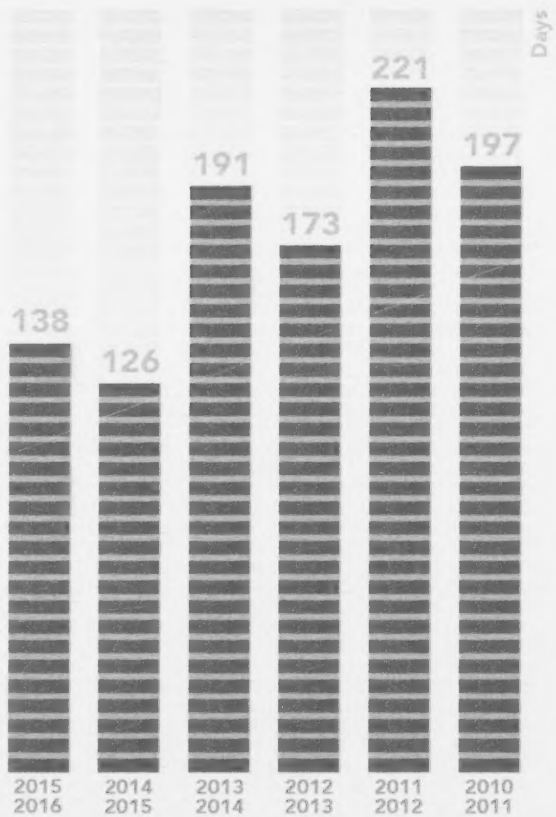
Another measure of the Board's performance, as well as a measure of the quality and soundness of its decisions, is the frequency of applications for judicial review of Board decisions to the Federal Court of Appeal, and the percentage of decisions upheld as a result of these reviews. In this respect, the Board continues to perform exceptionally well. From April 1, 2015, to March 31, 2016, 14 applications for judicial review were filed with the Federal Court of Appeal. During the same period, only one application (*Nishnawbe-Aski Police Service Board v. Public Service Alliance of Canada*, 2015 FCA 211) was granted.

Processing Times

The Board is committed to rendering fair and timely decisions to encourage fair and productive workplaces. In the 2015–16 fiscal year, the Board's files were processed within 138 days on average. Although this lead time is somewhat longer than in the preceding fiscal year, it shows net progress over 2010 to 2014. However, the Board could see this lead time increase in the near future, given its reduced number of decision-makers.

Among the types of matters processed in 2015–16, certification files were processed within the shortest timeframes, for a marked decrease over the preceding year. This is a result of the coming into force of the *Employees' Voting Rights Act* in June 2015 (under which a vote must be held in all applications for certification or revocation) and procedures in which the Board has imposed strict time limits.

However, this accomplishment had a negative effect on processing times for some matters, such as duty of fair representation complaints, owing to the additional workload imposed by this Act.



Average Processing Times

SECTION 2

MAJOR CHANGES IN 2015–16

MAJOR CHANGES IN 2015–16

Creation of the Administrative Tribunals Support Service of Canada (ATSSC)

The creation and implementation of the Administrative Tribunals Support Service of Canada (ATSSC) announced in 2014 is now well underway. Since the implementation of the Act that created the ATSSC, the Board no longer has its own resources or employees, as all of its human and financial resources were transferred to the ATSSC, including the industrial relations officers, counsel and registry employees. The Board must therefore negotiate and obtain all the funding and services it needs to deliver on its mandate from the ATSSC, a third party organization.

This model continues to raise several questions regarding the Board's accountability and judicial independence in processing the files with which it is seized, as it no longer establishes the overall priorities or decide on the allocation of resources to carry out its statutory mandate.

While the ATSSC strives to encourage synergy and achieve greater effectiveness in terms of the support it offers to the 11 administrative tribunals, each one very different from the other, the Board takes great care to ensure that its expertise and approach to dispute resolution in labour relations are recognized and maintained.

Appointments

The newly elected government expressed its intention to implement a more rigorous approach to appointments made by the Governor in Council (GIC). It pledged to follow a transparent and merit-based appointment process, in keeping with the government's commitment to ensure gender equality and an appropriate representation of Canadian Aboriginal people and minority groups in management positions.

Given that several Board members' terms ended during the fiscal year, the Board works closely with the representatives of the Minister of Employment, Workforce Development and Labour, to provide the required information to help define the process that will be used to appoint Board members acting as employee and employer representatives. The Code provides that these appointments are made following consultations with the organizations that represent employees or employers, as applicable.

However, this new approach has delayed the appointment of Board members. As a result, it is forced to conduct its business with a smaller number of decision-makers which could lead to delays in processing matters.

Adoption of Bill C-525, Employees' Voting Rights Act

During the fiscal year, the *Employees' Voting Rights Act* (the Act) was adopted, and amendments were made to the *Canada Labour Code* (*Part I–Industrial Relations*) (the *Code*). As a result, since June 16, 2015, any applicant applying for certification must show that, as of the date of the filing of the application, it has membership support of at least 40% (instead of 35%) of the employees in a bargaining unit determined appropriate by the Board. Once this condition is fulfilled, the Board must order a representation vote. Similarly, in the case of an application for revocation, a vote will be held where the applicant shows that, as of the date of the filing of the application, the applicant has the support of at least 40% of the employees in the unit concerned. Consequently, the Board can no longer certify or decertify a trade union solely on the basis of membership evidence or evidence in the form of a statement filed with the application.

During the period under review, the Board established new procedures to ensure the timely processing of certification and revocation applications following the coming into force of the statutory amendments. Among other things, the Board has shortened the time limit for submitting documentation, responses and replies, and has established a new processing schedule aimed at ensuring that representation votes are held in a timely manner. The purpose of these measures was also to reduce or prevent conflicts that may arise during the certification or revocation process which sometimes lead to complaints of unfair labour practice. In addition, the Board has developed new forms and information circulars and added detailed instructions to application for certification and revocation forms to guide parties through the statutory amendments.

Bill C-4 – Repeal of Bill C-525

On January 28, 2016, Minister Mihychuk tabled legislation (Bill C-4) in the House of Commons that would repeal Bills C-377 and C-525. Bill C-377 amended the *Income Tax Act* to require public disclosure of union expenses and salaries above a certain threshold. Bill C-525 essentially replaced the card-based certification system with a process based on a mandatory vote by secret ballot. If it is adopted, Bill C-4 will restore the *Code* requirements for the certification and revocation of certification of bargaining agents that existed prior to June 16, 2015, the date Bill C-525 took effect.

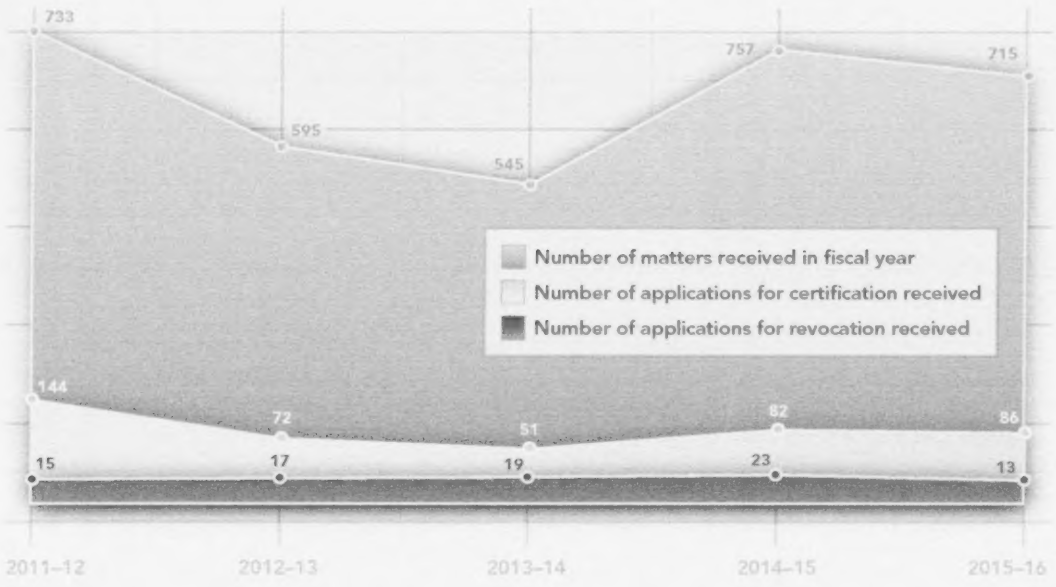
Statistics on Certification and Revocation Applications

Given that the new certification process is of current interest, the following pages provide a few statistics that demonstrate the impact of the new Act on processing these files.

Number of Bargaining Rights Applications Received by Fiscal Year

Figure 1 illustrates the number of certification and revocation applications received by the Board in the last five years. The data for 2015–16 includes applications for certification and revocation received after the Act came into effect on June 16, 2015.

Figure 1



Number of Representation Votes Conducted

Figure 2 indicates the number of applications disposed of on the basis of membership evidence or confidential employee statements compared to those involving representation votes held in the last five years ending June 15, 2015. From the date of coming into force of the Act on June 16, 2015, to March 31, 2016, representation votes were conducted in 78% of the bargaining rights applications disposed of. Of the total number of bargaining rights applications disposed of during this period, 69% were granted following the conduct of the vote, and 23% were dismissed.

DID YOU KNOW THAT...

- the **average size of the bargaining units** affected by applications for certification or revocation in 2015–16 was **75 employees**;
- 44% of the applications received **since June 16, 2015**, concerned **units of 15 or fewer employees**.

In the majority of cases, the results of the representation vote confirm the level of support presented at the time of filing the application. Usually, the percentage of support following the holding of a vote remains relatively the same or is greater than that demonstrated by the membership evidence filed with the application. This held true in all matters where a representation vote was held, except in eleven of these matters. In one case, the vote was not counted because the required 35% participation threshold was not met; three applications were withdrawn following the conduct of the representation vote; and, in seven cases, the percentage of support was lower following the conduct of the vote. The results also show that the number of applications granted after the adoption of Bill C 525 fell slightly compared to the figures reported prior to that time.

Figure 2

Basis for decision/Fiscal year	2011–12*	2012–13	2013–14	2014–15	2015–16*	2015–16* (prior to)	2015–16* (following)
Total no. of applications disposed	150	109	80	104	99	49	50
Withdrawn by applicant	20	14	10	11	18	8	10
Granted on the basis of membership evidence	75%	82%	53%	67%	40%	78%	N/A
Dismissed on the basis of insufficient membership evidence or for other reason (e.g. untimeliness)	10%	8%	26%	11%	9%	7%	10%
Representation votes held	21*	9	15	21	46	7*	39*
No. of votes held as a percentage of all applications received	14%	8%	19%	20%	46%	14%	78%
Applications granted after vote	67%	56%	87%	62%	63%	29%	69%
Applications dismissed after vote	29%	44%	13%	38%	28%	57%	23%
No. of applications granted as a percentage of the total of applications received	74%	76%	63%	72%	62%	69%	54%

* *In 2011–12, and in 2015–16 prior to the statutory amendments, one application was withdrawn following the conduct of the representation vote; after June 16, 2015, three were withdrawn following the conduct of the vote.*

Number of Applications Granted or Dismissed Following the Conduct of a Representation Vote

Figure 3 illustrates the number of applications granted or dismissed by year for all applications received.

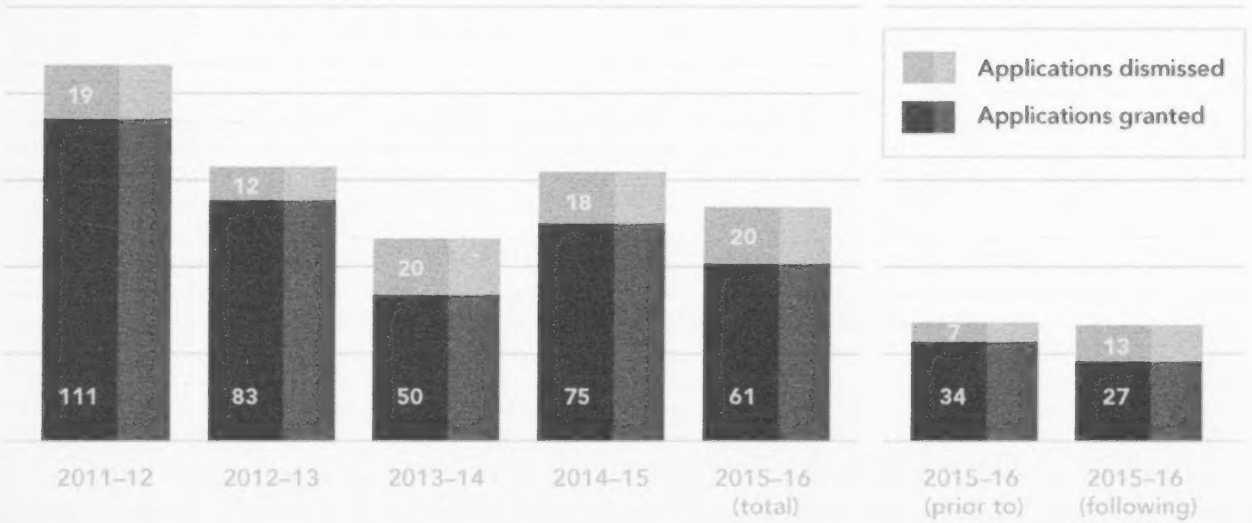
Since the Act came into force, a representation vote is ordered in the majority of bargaining rights applications received. The Board's challenge is to ensure that these votes are held in a timely manner in order to minimize or prevent disputes during the certification or revocation process which can result in unfair labour practice complaints. New procedures aimed at shortening the time limits for submitting documents, responses and replies were implemented and a new processing schedule was established.

The average number of days before the start of the vote varies based on the voting method. The Board conducts representation votes in one of three ways:

1. In-person votes, normally held in the workplace or a nearby location
2. Mail-in ballots
3. Electronic voting.

The decision as to the manner in which the representation vote will be taken is based on the size of the bargaining unit and the geographic location of employees. Normally, the Board holds in-person votes in cases involving a small bargaining unit in which the employees work at a single location. Prior to the advent of electronic voting, the Board used mail-in ballots to conduct representation votes in cases where the employees were widely dispersed or did not work at a single location (e.g. truck drivers). In recent years, the Board has implemented the use of electronic voting for large or widely dispersed bargaining units. Electronic voting permits employees to vote by telephone or over the Internet. The Board's experience to date has demonstrated that fewer issues arise with electronic voting (for example, no spoiled ballots) and that participation rates tend to be equal to or greater than with mail-in ballots.

Figure 3



Number of Representation Votes Held by Type and Year

Figure 4 illustrates the Board's use of the various types of voting mechanisms over the past five years. The data includes votes held in matters still pending before the Board as of March 31, 2016. The Board evidently has made greater use of electronic voting since the statutory amendments came into force.

Figure 4

Type of vote/Fiscal Year	2011–12	2012–13	2013–14	2014–15	2015–16	2015–16 (prior to)	2015–16 (following)
In-person	14	6	12	10	36	6	30
Mail	2*	2	2	11	8	1	7
In-person and mail	0	0	0	0	1	0	1
Electronic	4	1	1	0	8	0	8
Total	20	9	15	21	53	7	46**

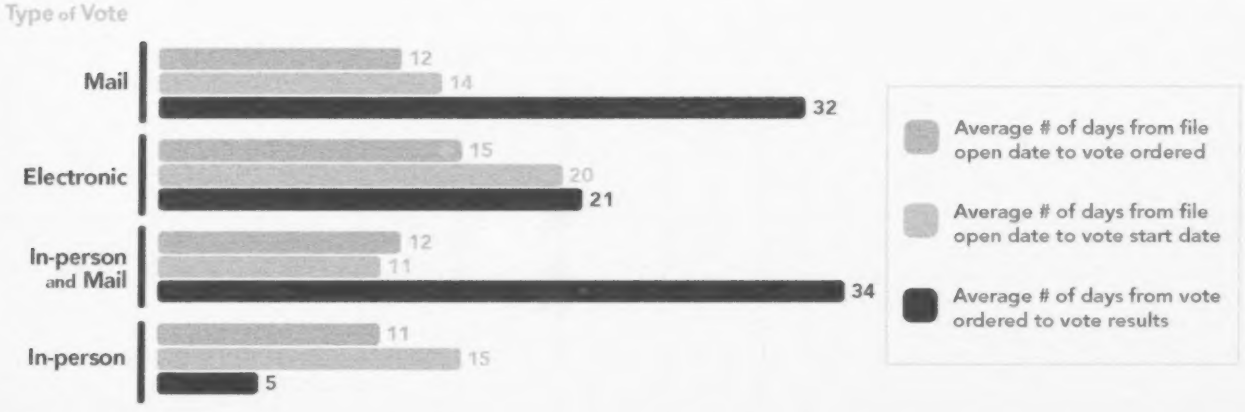
* *In two cases, a single vote was held to dispose of two applications.*

** *Includes votes in matters still pending at March 31, 2016.*

Average Number of Days for a Vote Process since Amendments by Type of Vote

Figure 5 illustrates the average number of days required for ordering and conducting representation votes, by type, following the coming into force of the statutory amendments.

Figure 5 – Average Time (Days) for the Vote Process by Type in Applications Received on or after June 16, 2015



The Board has been successful in meeting its 30-day objective for the processing of certification and revocation applications in 76% of matters disposed of, in the nine and a half months since the statutory amendments came into force. Cases that took longer involved particular situations that required a different case management approach. For example, in one case, a second vote was ordered by the Board with the consent of the parties. In another case, the matter was held in abeyance for a period of time while the provincial labour board was proceeding with a parallel application. Nevertheless, the Board has achieved its objective in a large majority of cases and it has done so by adhering to very strict processing schedules and by granting extensions of time for submitting the necessary information to the Board in exceptional cases only. Given that applications for certification and revocation must receive priority processing to fulfil legislative requirements, the Board and the parties themselves face additional pressure to guarantee that these applications are processed within the prescribed time limits. The Board's overall performance has also been impacted due, in part, to the priority given to bargaining rights applications by the Board. The average number of days for processing[1] all applications and complaints filed with the Board rose to 138 days, compared to 126 days in 2014–15; the number of matters pending before the Board rose by 21% over the previous year. The Board was able to issue a decision and notify the parties of that decision within the 90 day time limit set out in the *Code* in 74% of matters, which represents a decrease over the previous year.

Figures 6 and 7 respectively illustrate the number of matters pending a decision and the Board's decision-making time in the last five years.

1 *Processing includes the creation of the file, the investigation, mediation, the hearing and the resulting decision-making process.*

Figure 6 – Number of Matters Pending a Decision

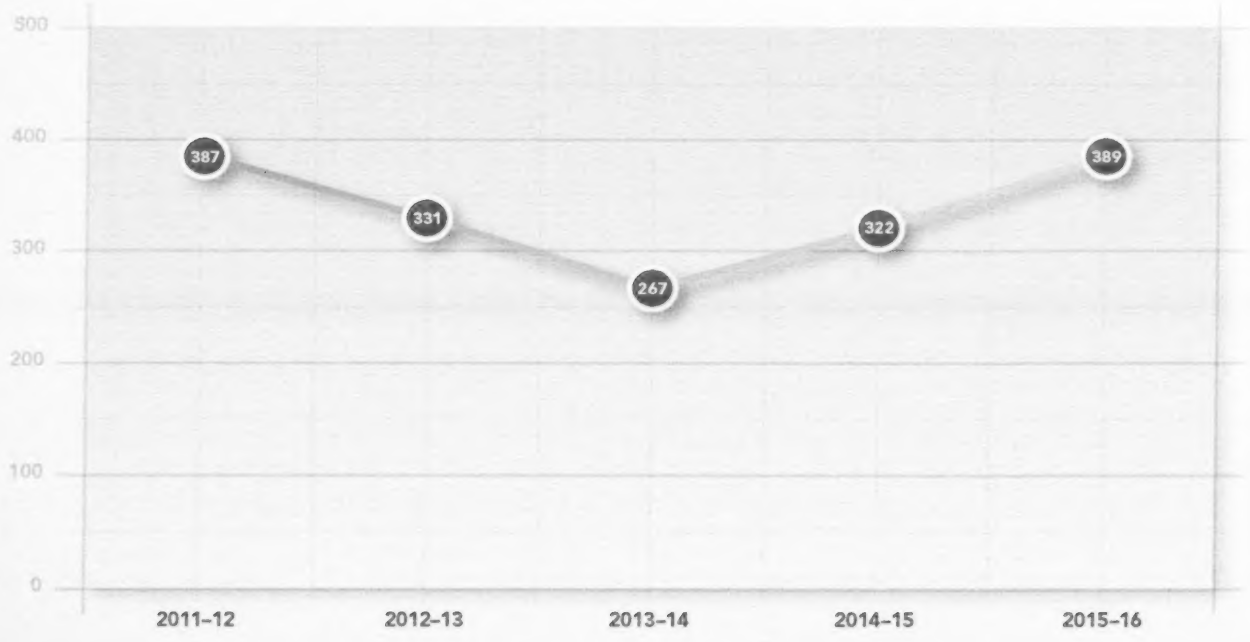
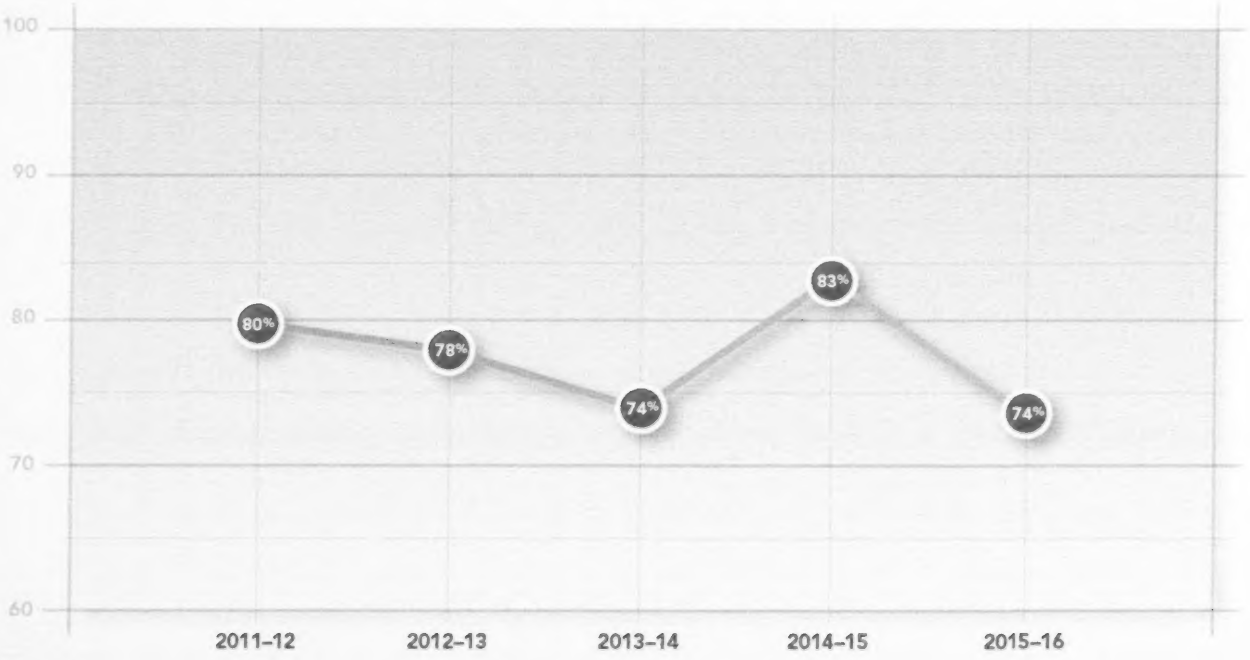
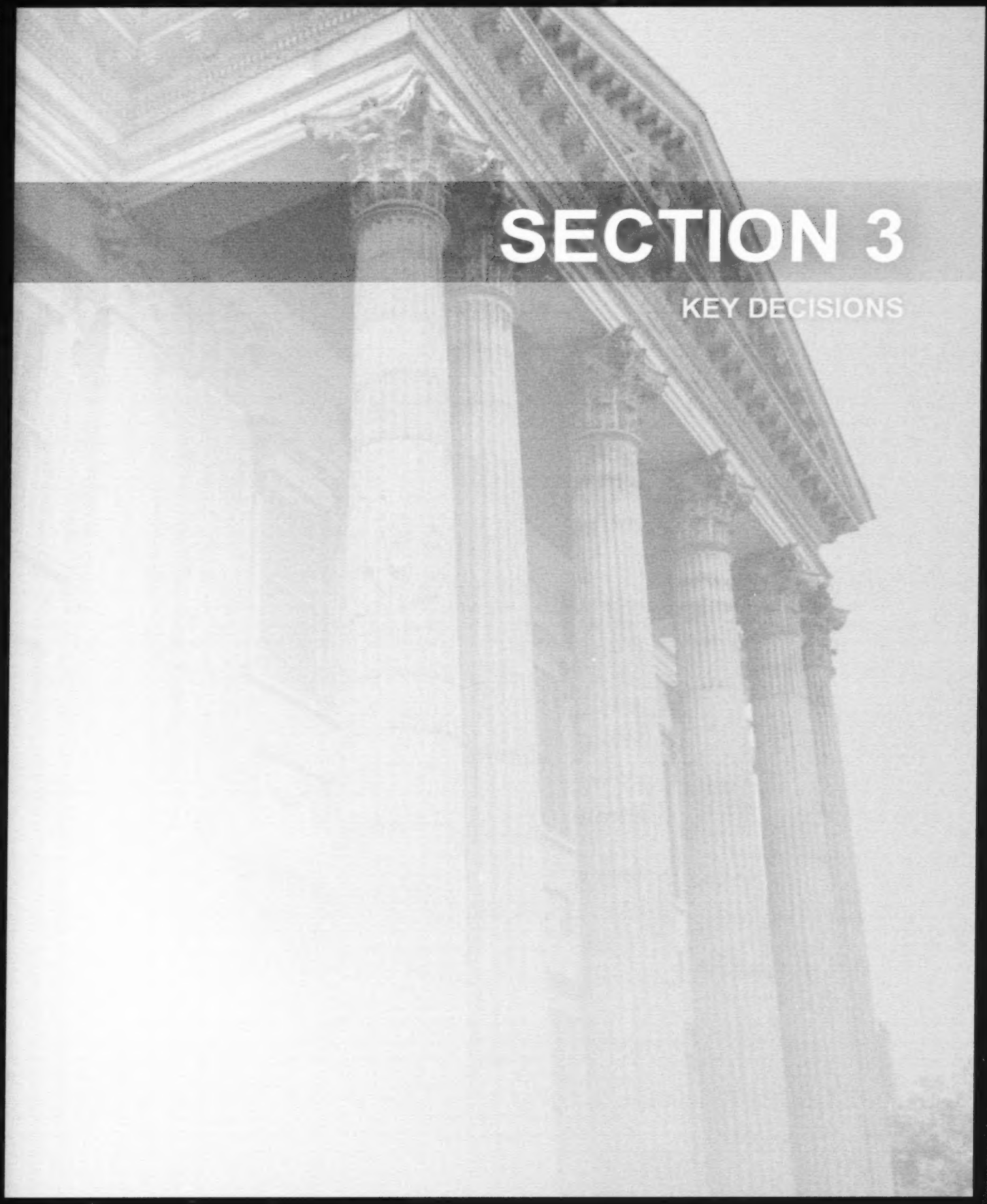


Figure 7 – Percentage of Matters in Which the 90-day Statutory Time Limit Provided in the *Code* for Rendering a Decision and Giving Notice Thereof to the Parties Was Met

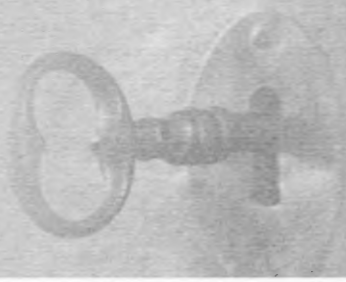




SECTION 3

KEY DECISIONS

KEY DECISIONS



The following is a summary of the key decisions rendered by the Board and appellate bodies in the past fiscal year. They are presented by subject and include a hyperlink for viewing the complete text.

Complaints of a Violation of the Union's DFR

Cadieux, 2016 CIRB 809

The Board reconsidered the complaint filed by Mr. Cadieux on September 30, 2011, in light of the judicial review by the Federal Court of Appeal (FCA) (*Cadieux v. Amalgamated Transit Union, Local 1415*, 2014 FCA 61), which reaffirmed the need to consider the following questions when the Board is to determine whether the union's conduct was arbitrary: 1) Was the union's investigation into the complainant's grievances against his suspension and termination cursory or comprehensive? 2) Did it obtain sufficient information to arrive at an informed decision on the complainant's termination? The FCA also reaffirmed that an employee's participation in the investigative and decision-making process of his or her union is a relevant factor but not sufficient to prevent the Board from concluding that the union breached its duty of fair and equitable representation. Greyhound dismissed the complainant on the ground that he persisted in not complying with the minimum rest requirements imposed on drivers and that he was not correctly recording his hours of work in his log.

The Board found that the Amalgamated Transit Union, Local 1415, violated the *Code* in conducting a perfunctory and superficial investigation. The union blindly accepted the employer's version and ignored the evidence it had at its disposal (the special circumstances required special attention).

The Board referred the matter to the Industrial Relations Officer so that he may assist the parties in finding a common ground concerning redress within 30 days. An agreement was not reached, and the Board has not yet ruled on the final redress.

Fortin, 2016 CIRB 810

In this file, the complainant submitted that she had not received any news from her union concerning all of the grievances she had filed and that she was unaware of any progress made in those grievances. There had been no oral or written communication between the complainant and her union or those responsible for handling grievances, despite the fact that the complainant had approached the union's office staff several times. The local union's president stated in his testimony that there had been no written or oral contact with the complainant regarding the status of her grievances. It is not necessary to demonstrate harm because the issue here is not a mere lack of communication, but rather the union's complete failure to act and a failure to conduct an investigation.

The Board found that the union demonstrated an indifferent, even uncaring attitude toward the complainant and that the union's conduct had to be considered arbitrary. It ordered that all of the grievances filed be referred to arbitration, that any applicable time limits under the collective agreement be waived, and that the union cover the complainant's legal fees and reasonable expenses for the preparation and hearing of her grievances before the arbitrator should the complainant choose not to be represented by union counsel.

Sutcliffe Heinrichs, 2016 CIRB 819

The complainant, a term employee with Canada Post Corporation, alleged that her union failed to assist with her in her attempts to return to work after an extended period of maternity leave and work-related medical leave. The union did not respond to any of the complainant's communications and did not provide any submissions to the Board concerning the DFR complaint. The Board held that based on the uncontested submissions of the complainant, the union had breached its DFR when it failed to respond to the complainant's numerous requests for assistance in her attempts to return to work following a period of disability. The Board noted that the union must show an extra measure of care when dealing with accommodation requests.

The Board ordered that the grievance be filed on the complainant's behalf at the arbitration stage of the grievance procedure and that it be scheduled for hearing. It also ordered that the union be held liable for any compensation and damages awarded by the arbitrator to the complainant for the period between the date of filing the DFR complaint and the date of the Board's decision.

Complaints of a DFR Violation by an Employers' Association

Quebec Ports Terminals Inc., 2015 CIRB 765

The employer filed a complaint pursuant to section 34(6) against the Maritime Employer Association (MEA) alleging that it violated its duty of fair representation (DFR) by settling a grievance despite the employer's opposition. To assess the MEA's conduct, the Board applied the fundamental principles applicable to section 37 complaints. In dismissing the complaint, the Board found that the MEA had considered the grievance, conducted a meaningful investigation, and decided to settle based on a legal opinion and the interest of its members, thereby fulfilling its DFR.

Parrish & Heimbecker, Limited, 2015 CIRB 786

The Board dismissed the employer's DFR complaint against the Maritime Employer Association for allegedly settling a grievance precipitously and without consent. The Board confirmed that an employer representative's DFR is similar to that of a union in the context of the handling of grievances, and ultimately, the employer representative has carriage of a grievance arising from an alleged violation of a collective agreement in the context of a geographic certification order.

Unfair Labour Practice Complaints

Canadian Pacific Railway Company, 2015 CIRB 790

The Board dismissed a section 94 complaint filed against CP Rail for vetoing the reappointment of arbitrator Picher to the Canadian Railway Office of Arbitration and Dispute Resolution (CROA). While the Board noted that the timing and manner in which CP Rail withdrew its support for arbitrator Picher's reappointment did nothing to improve an already difficult relationship with the union, it could not conclude that this conduct had a drastic and substantial impact on the union's ability to discharge its responsibility as the exclusive representative of the members of the bargaining unit.

Canadian Pacific Railway Company, 2015 CIRB 783

The Board considered the effect of referring outstanding collective bargaining issues to binding arbitration, pursuant to section 79 of the *Code*, on the terms and conditions of employment.

The Teamsters Canada Rail Conference filed an unfair labour practice complaint with the Board, alleging that Canadian Pacific Railway Company failed to respect the terms of a return-to-work agreement (RTWA) entered into when the parties agreed to binding arbitration.

The Board considered that an agreement reached under section 79 of the *Code* to submit to arbitration questions that remain unresolved ends the dispute between the parties who can no longer use a strike or lockout as a dispute resolution method. The Board determined that such an agreement is equivalent to concluding a new collective agreement, with some terms remaining to be determined through the implementation of the arbitrator's award. In this regard, the Board indicated that section 79 operates prospectively and cannot be interpreted to reinstate the freeze provision pursuant to section 50(b) of the *Code*.

The Board also determined that once outstanding issues have been sent to arbitration pursuant to section 79 of the *Code*, the parties cannot make unilateral changes to the existing terms and conditions. Notwithstanding the terms and conditions agreed on during negotiations or the implementation of a mutual agreement, the Board found that the parties continue to be bound by the terms and conditions of the former collective agreement until such time as it is revised by the arbitrator's decision. The Board considered the terms of the RTWA and found that the parties had mutually agreed to return to the terms and conditions that were in place prior to the commencement of the strike, including the terms contained in the parties' interim agreement, the period of applicability of which had been extended by the Board's order.

In light of the above, the Board found that the employer unilaterally imposed changes in the administration of leave for union business without regard to the terms and conditions that were in place as a result of the agreement reached pursuant to section 79 and the RTWA. Accordingly, the Board found that the employer violated section 94(1)(a) of the *Code*.

Constitutional Jurisdiction

Raytheon Canada Limited, 2015 CIRB 789

The Board held that it had constitutional jurisdiction concerning the work performed for the Government of Canada's North Warning System (NWS) (a federal undertaking) by a contractor and its subcontractor. The Board applied the derivative jurisdiction test and concluded that the services provided by the contractor and its subcontractor, which consisted of the "care, control and custody" of the NWS, were vital and essential to this undertaking.

Correctional Service Canada, 2015 CIRB 779

The Board considered the labour relations status of inmates performing paid work who wanted to unionize. In an earlier decision, the Public Service Labour Relations Board found that inmates were not considered "employees" within the meaning of the *Public Service Labour Relations Act*. In its decision, the Board indicated that any employment relationship the working inmates may have would necessarily be with Her Majesty in right of Canada and it held that the inmates were excluded from the *Code* pursuant to section 6.

Waycobah First Nation, 2015 CIRB 792

In dismissing the union's certification application for a unit of employees at Waycobah's Fishery, the Board concluded that first, the fishery was not a federal undertaking in and of itself; second, the fishery was not vital, essential or integral to Waycobah First Nation as a federal undertaking; and third, the fishery activities did not emanate from treaty rights.

Northern Air Solutions Inc., 2015 CIRB 773

The Board determined that Northern Air is a federal undertaking, and based on the membership evidence, it certified the applicant union as the bargaining agent. As a result, the Board's decision dealt with two legal issues: the question of constitutional jurisdiction and the scope of the bargaining unit.

On judicial review, Justice Ryer, writing for the Federal Court of Appeal, upheld the Board's decision with respect to constitutional jurisdiction. The Court found no error in the Board's finding that the use of an airplane was determinative of the functional test, given that the employer could not operate an air ambulance service without an airplane. Further, the Court, found no error in the Board's finding that the employees engaged in the applicant's charter airline and air ambulance services were employed in the operation of a federal undertaking.

Citation for judicial review decision: *Northern Air Solutions Inc. v. United Food and Commercial Workers Canada, Local 175*, 2015 FCA 259

Membership Evidence

Garda Security Screening Inc., 2015 CIRB 764

In the context of a displacement application, the Board found improprieties in the membership evidence filed, with regard to both the collection of the $5.00 membership fee and the signatures on some membership cards. The Board concluded that the nature and extent of these improprieties had the effect of tainting all of the membership evidence submitted in support of the application, such that the Board was not prepared to accept its veracity or rely on it to order a representation vote.

Note: *Upheld on reconsideration:* *Garda*, 2015 CIRB 793

WestJet, an Alberta Partnership, 2015 CIRB 785

The Board considered the validity and reliability of membership evidence filed in support of a certification application which was collected by way of mailed-in cards and payment through an electronic service provider (PayPal). The Board found that the process put in place by the union through its Web site allowed employees to decide to join freely and voluntarily and provided sufficient measures to ensure that the evidence filed met the Board's requirements. With respect to the use of PayPal, even though a portion of the $5.00 payment went to the service provider, the Board held that the act of making the payment in support of the membership application was sufficient to demonstrate the commitment to join the union. Although the process used to collect membership evidence was not usual, the Board was unable to find evidence of misrepresentation, fraud or irregularities which would render the evidence invalid or unreliable.

Note: *Upheld on reconsideration:* *WestJet, an Alberta Partnership*, 2016 CIRB 806

AJW Technique, 2016 CIRB 814

The AJW Technique Workers' Association filed an application for certification to displace the International Association of Machinists and Aerospace Workers as the bargaining agent for a unit of employees at AJW Technique. The Board dismissed the application without holding a vote, due to substantive defects with the membership evidence. In addition to evidence of non-payment of the $5.00 fee, the Board found that a number of employees who signed cards were sufficiently confused about the identity of the applicant trade union to put into question the reliability of those cards. The Board also found that membership cards which were signed before the date of creation of the trade union were not reliable.

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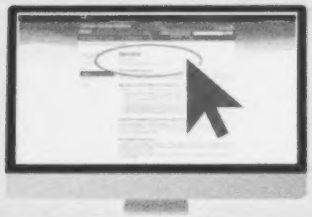

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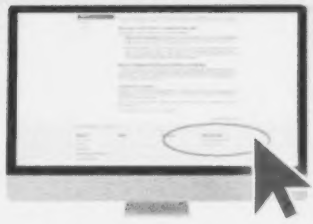

Religious Exemption

Farrell, 2015 CIRB 794

The Board considered the five guidelines set out in *Bradford* and dismissed the applicant's application for an exemption based on religious reasons. She did not successfully show that the fact of having to pay union dues, which she had been doing since 2005, would put her in such a position that she would no longer be able to continue her employment. Also, there was no evidence to suggest that she would be forced to join the union in the future, despite a provision on mandatory membership in the collective agreement.

Judicial Reviews

Bradford v. CAW-CANADA, 2015 FCA 84

The Federal Court of Appeal dismissed an application for judicial review of a Board decision rendered on reconsideration. This decision upheld the Board's initial decision denying a worker's request for religious exemption from union membership and payment of dues. It was reasonable for the original panel to deny the exemption on the basis that the applicant failed to establish his sincerity and had not rationalized his objections to unions after becoming aware of the *Code* provisions. The reconsideration panel reasonably concluded that there was enough evidence to support the original decision.

Nishnawbe-Aski Police Service Board v. Public Service Alliance of Canada, 2015 FCA 211 (application for leave to appeal to the SCC dismissed on April 7, 2016)

In this application for judicial review, the Federal Court of Appeal (FCA) was to determine whether the labour relations of the Nishnawbe-Aski Police Service (NAPS) came under federal or provincial jurisdiction. The FCA determined that the labour relations of the NAPS are provincially regulated and therefore the Board did not have authority to make certification orders.

First, the FCA reiterated and adopted the Supreme Court of Canada's analysis in *NIL/TU,O*. It reiterated that labour law is presumptively a matter for the provincial legislatures. Parliament has jurisdiction over labour relations only by way of exceptions, which are narrowly interpreted.

The FCA then confirmed that, as the SCC had determined, the presumption of provincial jurisdiction also applies in the Aboriginal context and can only be rebutted if the case falls into one of the two categories of exceptions.

The application for judicial review was granted, the Board's decision was set aside, and the FCA directed the Board to grant the application of the Nishnawbe-Aski Police Services Board to set aside the certification orders.